



## Final Regulation Agency Background Document

<b>Agency name</b>	Board for Waterworks and Wastewater Works Operators
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC160-20
<b>Regulation title</b>	Board for Waterworks and Wastewater Works Operators Regulations
<b>Action title</b>	Amending
<b>Document preparation date</b>	June 30, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The purpose of the final action is to adjust fees as necessary in accordance with § 54.1-113 of the Code of Virginia (Callahan Act). Additionally, the examination/reexamination fee will be set in accordance with a vendor contract entered into in compliance with § 2.2-4300 et seq. of the Code of Virginia (Virginia Public Procurement Act).

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Board for Waterworks and Wastewater Works Operators adopted the amendments to the Board for Waterworks and Wastewater Works Operators Regulations as final regulation on June 22, 2004.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

---

§ 54.1-113. (Callahan Act) Regulatory boards to adjust fees – Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under §54.1-308 or §54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

§ 54.1-201.4 describes each regulatory board's power and duty to “levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department...”

§ 54.1-304.3 describes the power and duty of the Director to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards, and the Department shall be paid..."

§ 54.1-308 provides for compensation of the Director, employees, and board members to be paid out of the total funds collected. This section also requires the Director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

§ 2.2-4300 et seq. (Virginia Public Procurement Act) ensures “that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded...”

Fee adjustments are mandatory in accordance with these Code sections. The Board exercises discretion in how the fees are adjusted by determining the amount of the adjustment for each type of fee. The Board makes its determination based on the adequacy of the fees to provide sufficient revenue for upcoming operating cycles.

Examination fees directly reflect the charges to the Department by an outside vendor based on a contract entered into in compliance with the Virginia Public Procurement Act. These charges will change as contracts are renewed or renegotiated, or as the Department enters into new contracts.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The intent of the final regulation is to increase fees for applicants and regulants of the Board for Waterworks and Wastewater Works Operators. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

Examination fees are determined by charges to the Department by an outside vendor based on a contract entered into in compliance with the Virginia Public Procurement Act. As these charges change, the examination fee must change accordingly.

The Department of Professional and Occupational Regulation (DPOR) receives no general fund money, but instead is funded entirely from revenue collected for applications, renewals, examination fees, and other fees. The Department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the Department's authorized special revenue appropriation.

The ability of the board to continue to process applications in a timely and accurate manner increases the level of public safety and welfare by ensuring that only those applicants that meet or exceed the requirements set forth in the statutes and regulations are granted licenses, certificates, or registrations.

**The Board for Waterworks and Wastewater Works Operators has no other source of revenue from which to fund its operations.**

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

Fees will be increased as necessary to comply with the § 54.1-113 of the Code of Virginia and to cover costs incurred from vendor supplied examinations.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary issue for the fee increase is the Department’s statutory requirement to comply with the Callahan Act.

The advantage of the final regulation is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that the final regulation will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to level of income.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change

There have been no changes in the regulation text since the proposed regulation was published.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

Commenter	Comment	Agency response
Todd Jennings 334 Wild Cherry Lane Dugspur, VA 24325	Agree with increase in application fee from \$85 to \$100.  Disagree with raising the cost of the renewal fee from \$45 to \$100. Such an increase is beyond excessive. This action would be a great burden for operators whose fees aren't paid by their employer. Would prefer to see renewal fees stay where	Thank you for your correspondence concerning the Board for Waterworks and Wastewater Works proposed fee increase.  The notice you received indicated, in error, that the renewal fee would increase from \$45 to \$100 instead of \$80. A correction was subsequently mailed to each regulant.  Section 54.1-113 of the Code of Virginia (Callahan Act) mandates that the Board

	<p>they are or raised to \$50.</p>	<p>adjust its fees when its expenses become 10% more or 10% less than the revenues collected on its behalf. The Board receives NO General Fund revenue. All costs must be paid by fees collected from those regulated.</p> <p>The Board has carefully considered your comments along with the comments received from others. The Board understands your concern over the dollar amount of the fee increase and the impact it will have on you. Please note that this is the first fee increase since 1992 (12 years ago) and that fees were reduced in 1999.</p> <p>The Board has determined that this fee increase is necessary to comply with § 54.1-113 of the Code of Virginia (Callahan Act) and to assure adequate funding for continuing operation.</p> <p>The Board adopted the proposed fee increase as a final regulation during its meeting on June 22, 2004.</p>
<p>David A. Crockett PO Box 71 Fork Union, VA 23055</p>	<p>Believe that increasing the renewal fee from \$45 to \$100 is excessive and do not support such a substantial increase.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>William M. Wood 611 Grove Avenue Charlottesville, VA 22902-4806</p>	<p>Believe that increasing the application fee from \$85 to \$100 appears to be acceptable.</p> <p>However, feels justification for increasing renewal fee from \$45 to \$100 is inadequate. Increasing a fee more than 100% is desperate and indicates a lack of administrative competence. Suggests an increase of renewal fee to \$70 or \$80.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>Steven R. Gibbs <a href="mailto:Steven.Gibbs@dhs.gov">Steven.Gibbs@dhs.gov</a></p>	<p>Increase of renewal fee to \$100 seems too high and hopes the Board reconsiders.</p>	<p>Same Agency response as given to Todd Jennings.</p>

<p>Matt Sauter  <a href="mailto:VaH2Oguy@aol.com">VaH2Oguy@aol.com</a>                  Lic No 1901-000734                  5922 Calhoun Dr.                  Fredericksburg, VA                  22407</p>	<p>Proposed application fee is not warranted and the proposed renewal fee increase is ridiculous. Such an increase will put a hardship on operators making lower wages.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>Gerry Langfitt  <a href="mailto:Trident432@msn.com">Trident432@msn.com</a>                  Lic No 1901-001101                  2553 Georges Rd.                  Powhatan, VA 23139                  804/598-2854</p>	<p>If there is an increase of this magnitude, operators who do not have their employers pay their licenses fees will probably leave the business. Concerned that those who are fortunate enough to have fees paid for by employers, that the employers may rescind this benefit.</p> <p>Feel it is not fair to have an increase of over 100% to the people who have to ensure the safety and well being of the customers who depend on clean and safe water to drink.</p> <p>Suggest spreading the increase around to other professions that require licensure or have DPOR draw from a general fund.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>Stanley R. Bennett  <a href="mailto:tamstan@gpoffice.com">tamstan@gpoffice.com</a></p>	<p>The proposed increase, especially the renewal increase, would place a great burden on the small municipalities and operators that pay these fees. If record-keeping costs have increased so dramatically, perhaps measures could be taken to decrease the costs and leave the fees at their current level of burden.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>Jeffrey Powell                  8802 Semmes Ave.                  Norfolk, VA 23503</p>	<p>Feels fee increase of 81% is excessive.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>Peter Mango  <a href="mailto:Peter.Mango@dhs.gov">Peter.Mango@dhs.gov</a>                  Lic No 1901-000522                  Lic No 1909-000625                  213 Summit Avenue                  Winchester, VA 22601</p>	<p>Feel the proposed renewal fee increase from \$45 to \$100 is excessive. An increase of more than 100% is too much for operators to handle, especially those at smaller plants.</p>	<p>Same Agency response as given to Todd Jennings.</p>

<p>Jyoti Mukerji  <a href="mailto:jmukerji@jhmiles.com">jmukerji@jhmiles.com</a>                  Lic No 1911-002946                  902 Southampton Ave.                  Norfolk, VA 23510</p>	<p>The proposed increase in renewal fees from \$45 to \$100 is objectionable. The processing of a renewal requires minuscule time and resources compared to a complete application processing.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>Todd Vander Pol  <a href="mailto:Dakotaeast@aol.com">Dakotaeast@aol.com</a></p>	<p>Believes the proposed increase is unjustified. The operators should not have to pay the cost of increasing government expenses.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>John Hart  <a href="mailto:jhart@deq.state.va.us">jhart@deq.state.va.us</a>                  Lic No 1909-000037                  Lic No 1901-000065                  588 Hilltop Dr.                  Staunton, VA 24401</p>	<p>Could not locate details of proposed fee increase.                   Board staff responded to Mr. Hart advising that the requested information is available on Virginia's Regulatory Town Hall web site:  <a href="http://www.townhall.state.va.us">www.townhall.state.va.us</a>. No further comment was received.</p>	
<p>Noel D. Thomas                  Compliance Inspector Senior                  VA Department of Environmental Quality                  Valley Regional Office                  PO Box 3000                  Harrisonburg, VA 22801</p>	<p>Could not locate details of proposed fee increase.                   Board staff responded to Mr. Thomas advising that the requested information is available on Virginia's Regulatory Town Hall web site:  <a href="http://www.townhall.state.va.us">www.townhall.state.va.us</a>. No further comment was received.</p>	
<p>David Keith Navia  <a href="mailto:dnavia@hrsdc.com">dnavia@hrsdc.com</a>                  Lic No 1909-000494                  PO Box 40                  Williamsburg, VA 23187</p>	<p>Proposed fee increases are unacceptable. Most WWW operators earn relatively low wages while performing work essential to the health, safety, and well-being of all the Commonwealth's citizens. Suggest raising fees of professions which can more easily afford an increase. If WWW fees must be increased, raise only the late fee to \$50.</p>	<p>Same Agency response as given to Todd Jennings.</p>
<p>Kim Anthony Mitchell                  1410 Stewart Avenue                  Hopewell, VA 23860-6109</p>	<p>Very unhappy about the fee increase. "You propose to nearly double my renewal fee, but am I getting any additional services for my money?" The</p>	<p>Same Agency response as given to Todd Jennings.</p>

	only reason for this increase can be greed. The increase is not reasonable.	
Dan Blevins <a href="mailto:dancar98@msn.com">dancar98@msn.com</a> 2330 Franklin St. Salem, VA 24153	In the bad economy, everybody understands that it is time to tighten belts another notch, but the proposed increase is nearly 100 percent. Operators are told by employers that salary increases are impossible. The proposed fee increase is not only unfair, it's heartless.	Same Agency response as given to Todd Jennings.
James Whited <a href="mailto:SidsGrill@aol.com">SidsGrill@aol.com</a> Polyester Park Radford, VA	Commenter is a senior citizen who is angry that the cost of goods and services, including license renewal fees are increasing. He offered no alternatives, just wanted to vent.	Same Agency response as given to Todd Jennings.
India King England Roanoke Water Pollution Control Plant 1402 Bennington Street Roanoke, VA 24014	Cannot see how the Board can justify the proposed increase in renewal fees. Suggest the Board consider a smaller increase.	Same Agency response as given to Todd Jennings.
Kevin Talley <a href="mailto:ktalley@visuallink.com">ktalley@visuallink.com</a> Lic No 1909-001852	Proposed fees are extreme and excessive. They will cause hardships for operators on salaries that are already limiting. Asked to reconsider a lesser amount of increase.	Same Agency response as given to Todd Jennings.
Robert D. Clouser <a href="mailto:robertclouser@msn.com">robertclouser@msn.com</a>	Feels that both fee increases are excessive and should be reexamined. Suggests an increase of \$5 or 1-2% so not to put a hardship on anyone.	Same Agency response as given to Todd Jennings.
Jeffrey Powell 8802 Semmes Ave. Norfolk, VA 23503 <a href="mailto:jpowell@hrsdc.com">jpowell@hrsdc.com</a>	The corrected increase is still extreme all at one time. Suggests increases in small increments when needed not wait until the fee has to be doubled. Expects the Board to make reasonable and responsible decisions.	Same Agency response as given to Todd Jennings.
Philip A. Lewis 4159 Pineyridge Lane Woodbridge, VA 22103-1840 Lic No 1909-000193	Proposed fee increase appears to be extremely high. An increase of 15% for the application fee and 43.8% for the renewal fee appears exorbitant. Some large jurisdictions pay for	Same Agency response as given to Todd Jennings.

	<p>the fees, but smaller entities expect the employees to cover the expense out of their own pocket. People are not currently standing in line to get into this field and many more may leave it. Asking the Board to consider changing the proposed increase to be fair and equitable to all applicants and restrict any increase to no more than 5%.</p>	
<p>Douglas W. Phillips, Jr. Southeast RCAP, Inc. 145 W. Campbell Ave. Roanoke, VA 24001-2868 <a href="mailto:dphillips@sercap.org">dphillips@sercap.org</a></p>	<p>Would like DPOR to make available a detailed report justifying the fee increase of license renewals being considered. Feels the increase is too high by a factor of four.</p> <p>Board staff responded to Mr. Phillips advising that the requested information is available on Virginia's Regulatory Town Hall web site: <a href="http://www.townhall.state.va.us">www.townhall.state.va.us</a>.</p>	<p>Same Agency response as given to Todd Jennings.</p>

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
102 B		Establishes that the date a fee is received is the date of receipt of the fee by the board.	Language has been added to expand the "date of receipt of the fee by the board" to include "or its agent" should fees be collected by a vendor.
102 C		This subsection establishes the application fee as \$85, the renewal fee as \$45, the late renewal fee as \$25, and reexamination fees as \$75 and the bad check fee as \$25.	As required by the Callahan Act, the Board has increased the license application fee to \$100 and the license renewal fee to \$80 to ensure adequate funding for continued operation.  Language has been added to clarify that the \$25 license renewal late penalty fee is

			<p>in addition to the license renewal fee.</p> <p>The exact dollar amount for examination and reexamination has been repealed to allow the Department to adjust fees to reflect the charges to the department by an outside vendor based on a contract entered into in compliance with the Virginia Public Procurement Act.</p>
--	--	--	---

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

---

These fee increases are not anticipated to have any significant impact on Virginia's families.